WESTERN ENERGY ALLIANCE

January 20, 2017

Submitted via email: BLM_UT_PR_MAIL@blm.gov

BLM Price Field Office
125 South 600 West
Price, UT 84501

Re: San Rafael Desert MLP Alternatives

Dear Sir/Madam:

Western Energy Alliance appreciates the opportunity to submit comments on the preliminary alternatives for the Bureau of Land Management's (BLM) Master Leasing Plan (MLP) for the San Rafael Desert. However, we do not believe it is appropriate for BLM to prepare an MLP at this time, so we request BLM adopt Alternative A, the No Action Alternative.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in Utah and across the West. The Alliance represents independents, the majority of which are small businesses with an average of fifteen employees.

No Purpose or Need

The development of the MLP is of questionable need and purpose. The Price and Richfield RMPs were completed in 2008, with significant public input and agency effort. The MLP is unnecessary and harmful, and BLM should abandon this planning effort.

In 2010, the Secretary of the Interior created the new MLP process by Secretarial Order, creating another unnecessarily lengthy process that will further constrain and impede mineral development on federal lands. Given the lengthy public comment period provided during development of the 2008 Price and Richfield RMPs, the need to create another lengthy public process is unclear.

Under Alternatives B and D all acreage in the planning area would be subject to restrictions on oil and natural gas development, while Alternative B would place constraints on more than 90% of those acres. It is clear from these alternatives that BLM is constructing the MLP with one goal in mind: to limit oil and natural gas development.

Many of the constraints BLM seeks to impose would codify, through the addition of stipulations to lease documents, some of the same mitigation requirements currently being applied to lease development in the area. But there are also new restraints that BLM seeks to apply, which are costly, contrary to existing lease rights, and add great

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uncertainty to preexisting operational plans. The Price and Richfield RMPs provide sufficient planning details for BLM, and the additional restrictions envisioned in Alternatives B, C, and D are unnecessary and unlawful.

BLM MLP Policy Was Adopted Without Following the Administrative Procedure Act (APA)

BLM adopted its MLP planning process as an "Instruction Memorandum" in private, without involving the public. *See* Instruction Memorandum (IM) 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews. Yet the Federal Land Policy and Management Act (FLPMA) establishes a congressional requirement to develop, and standards for the content of, BLM RMPs. 43 U.S.C. § 1712(a). BLM regulations establish a clear and precise process for developing and amending those RMPs. *See* 43 C.F.R. § 1610.

The 2010 IM amends and alters these regulations by adding new standards and requirements, without a public process involving the public. For example, the IM establishes new criteria for when an MLP should be prepared. IM 2010-117 at 4. Unlike the regulations governing the development and revision of RMPs, the IM deems that certain leasing recommendations are not appealable or protestable decisions. IM 2010-117 at 5.

The APA requires agencies to adhere to three steps when they promulgate rules: (1) give the public notice of the proposed rulemaking in the Federal Register; (2) afford "interested persons an opportunity to participate … through submission of written data, views, or arguments"; and (3) explain the rule ultimately adopted. *See* 5 U.S.C. § 553(b)-(c); *see also Natural Resources Defense Council v. EPA*, 643 F.3d 311, 320-21 (D.C. Cir. 2011) (finding that EPA policy guidance constituted a legislative rule requiring compliance with APA rulemaking procedures). None of that happened for the 2010-IM, which was adopted with no public process.

BLM MLP policy impermissibly circumvents APA rulemaking requirements, especially given that it amends and supplements properly promulgated planning rules in the Code of Federal Regulations. BLM must address the legality of its reliance upon the MLP policy before issuing a final MLP that may be subject to immediate invalidation given that IM 2010-117 was not issued in compliance with the APA.

BLM Does Not Consider a Reasonable Range of Alternatives

The National Environmental Policy Act requires agencies to evaluate all "reasonable" alternatives to the proposed action. 40 C.F.R. § 1502.14. That evaluation of alternatives "is the heart of the environmental impact statement." *Id.* If BLM has decided to eliminate an alternative from further review, it must "briefly discuss the reasons for" doing so. 40 C.F.R. § 1502.14; *Laguna Greenbelt, Inc. v. U.S. Dep't of Transp.*, 42 F.3d 517, 525 (9th Cir. 1994).

Here, every action alternative is projected to result in less oil and natural gas development and will impose more restrictive stipulations on such development, when compared with

the status quo. BLM should not limit its review to considering whether to remove lands from availability for leasing or to impose new conditions on oil and natural gas development. Such a limited review prejudges the outcome; the question is no longer how best to structure the leasing process to meet the multiple use mandate, the question in the MLP becomes how to *limit* oil and natural gas development. The MLP should not be such a "foreordained formality." *Citizens Against Burlington, Inc.*, 938 F.2d at 196. BLM should consider all reasonable alternatives, including providing for leasing with standard terms and conditions.

Alternative A, the No Action Alternative, provides for leasing with management restrictions which were studied and approved in the current RMPs. It imposes restrictive timing limitations (TL), controlled surface use (CSU), and no surface occupancy (NSO) stipulations on significant acreage open to oil and natural gas leasing.

Alternatives B, C, and D, however, fail to recognize the need for orderly leasing and development, and attempt to limit leasing without allowing for proven scientific and economic evaluation of mineral resources. Even though these alternatives allow for possible exceptions, modifications, or waivers for the identified constraints, they all create another level of review and cost to determine if or when a development stipulation could be "excepted, modified or waived."

Alternatives B, C and D all ignore BLM's thorough analysis of environmental resource impacts and management prescriptions in the Price and Richfield RMPs that properly balanced the competing uses of the public domain in conformance with BLM's multiple use mandate. 43 U.S.C. § 1701(a)(12). These alternatives are a violation of BLM's underlying multiple-use mission, and therefore Alternatives B, C, and D are unreasonable alternatives. BLM has not considered a reasonable range of alternatives, and therefore it must adopt Alternative A in the final MLP.

Stipulations and Withdrawals from Leasing

In accordance with congressional mandate and FLPMA, BLM must analyze any withdrawal of land from mineral leasing, including impacts and cost. In order to withdraw tracts of land greater than 5,000 acres from mineral leasing, BLM must provide Congress with a variety of information detailing the impacts, costs, and need so that Congress can properly decide whether to approve the withdrawal. A withdrawal also requires public notice and hearing, and consultation with state and local governments.

Under FLPMA, a withdrawal is defined as "withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws…" 43 U.S.C. § 1702(j)

Furthermore, BLM policy forbids the closure of thousands of acres of public lands to oil and natural gas leasing without following FLPMA's Section 204 withdrawal procedures:

> Except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interest in accordance with the Department of the Interior Land Withdrawal Manual 603 DM 1, and the BLM regulations at 43 C.F.R. 2310. *See* BLM Energy and Non-Energy Mineral Policy (April 21, 2006)

Under Alternatives B and D, tens of thousands of acres in the MLP area would be closed to leasing, up from 193 acres in BLM's 2008 RMPs. These restrictions constitute a withdrawal under FLPMA, and BLM therefore may not take the specified actions without Congressional approval.

Valid Existing Lease Rights

Finally, FLPMA requires BLM to ensure that valid existing lease rights are unequivocally protected. 43 U.S.C. § 1701 note (h). Although BLM states that the MLP will recognize the existence of valid existing rights, the action alternatives apply timing limitations, CSU and NSO stipulations, and other management prescriptions across the planning area that may unlawfully preclude the development of valid existing oil and natural gas lease rights.

Such a result is not permissible, as explicitly stated in FLPMA, "All actions…under this Act shall be subject to valid existing rights." 43 U.S.C. § 1701 note (h); *see also* 43 C.F.R. § 1610.5-3(b) (requiring BLM to recognize valid existing lease rights). The statute does not leave room for discretionary actions that would be contrary to existing terms and stipulations. As they do not adequately protect valid existing rights, the action alternatives are once again in violation of FLPMA, and they cannot be adopted in the final MLP.

Should BLM proceed with the adoption of an MLP, Alternative A, the No Action Alternative, is the only reasonable, lawful alternative. Thank you for the opportunity to comment on the preliminary alternatives, and please do not hesitate to contact me with any questions.

Sincerely,

Tripp Parks
Manager of Government Affairs